

United States
Circuit Court of Appeals

For the Ninth Circuit. 6

COUNTY OF FRESNO, and G. P. CUMMINGS,
Assessor of the County of Fresno, State of
California,

Appellant,

vs.

COMMODITY CREDIT CORPORATION,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Southern District of California,
Northern Division

FILED

JUN 14 1933

PAUL P. O'BRIEN,
CLERK

United States
Circuit Court of Appeals

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COUNTY OF FRESNO, and G. P. CUMMINGS,
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

DAN F. CONWAY,

District Attorney, County of Fresno,

W. C. TUPPER,

Assistant District Attorney, County of Fresno,
Court House, Fresno, California.

EARL WARREN,

Attorney General, State of California,

JAMES J. ARDITTO,

Deputy Attorney General, State of California,
State Building, San Francisco, California.

For Appellees:

JOHN D. GOODLOE, Esq.,

Commodity Credit Corporation,
Washington, D. C.

TREADWELL & LAUGHLIN, Esqs.,

REGINALD S. LAUGHLIN, Esq.,

Standard Oil Building,
San Francisco, California. [1*]

*Page numbering appearing at the foot of page of original certified Transcript of Record.

In the District Court of the United States, in and for the Southern District of California, Northern Division.

Eq. No. E-26

COMMODITY CREDIT CORPORATION,
Plaintiff,

vs.

COUNTY OF FRESNO and G. P. CUMMINGS,
Assessor of the County of Fresno, State of
California,

Defendants.

STIPULATION

It Is Hereby Stipulated and Agreed by and between the parties to the above entitled action as follows:

1. The plaintiff herein is hereby granted leave to file an amended bill of complaint.

2. The defendants hereby withdraw their motion to dismiss the original complaint and shall forthwith file a motion to dismiss the amended bill of complaint. [30]

3. The defendants agree that no sale shall be made of any of the property as to which the plaintiff claims immunity from taxation until final determination of this cause. In case the said cause is not finally determined before the time fixed by statute for the seizure and sale regarding taxes levied and assessed in 1939 upon like property as to which plaintiff claims exemption from taxation, said defendants agree that after notice of sale is *give* the

actual sale will be postponed until the final determination of this action. In view of this agreement the temporary injunction heretofore granted may be dissolved.

4. If said case is finally decided against the plaintiff, either in whole or in part, plaintiff agrees to forthwith furnish to defendants a full and detailed statement as to the exact properties which are within the class or classes held not to be exempt from taxation.

5. In view of the equities in the instant proceedings the parties agree that the Court may provide that no interest or other penalties shall be collected from plaintiff for nonpayment of any of said taxes included in the pending cause and for subsequent years pending final determination of this action, and defendants will not object to such provision.

Dated: October 25th, 1938.

JOHN D. GOODLOE

REGINALD S. LAUGHLIN

Attorneys for Plaintiff

DAN F. CONWAY

District Attorney of County
of Fresno

W. C. TUPPER

Assistant District Attorney of
County of Fresno

Attorneys for County of Fresno
and G. P. Cummings, Asses-
sor of County of Fresno,
State of California. [31]

U. S. WEBB

Attorney General of the State
of California

By JAMES J. ARDITTO

Deputy Attorney General of
the State of California

JAMES J. ARDITTO

Deputy Attorney General of
the State of California

Of Counsel for County of
Fresno and G. P. Cummings,
Assessor of County of
Fresno, State of California.

It is so ordered:

Oct. 25, 1938.

GEO. COSGRAVE,

District Judge

[Endorsed]: Filed Oct. 25, 1938. R. S. Zimmerman, Clerk. By Francis E. Cross, Deputy. [32]

[Title of District Court and Cause.]

AMENDED BILL OF COMPLAINT

Commodity Credit Corporation, by leave of court first had and obtained, files this, its Amended Bill of Complaint against the defendants above named, and alleges:

I.

That Commodity Credit Corporation is and was at all times herein mentioned an instrumentality

and agency of the United States engaged in the exercise of governmental functions, and is and was at all times herein mentioned a corporation organized and existing under and by virtue of the laws of the State of Delaware, with all of its issued and outstanding stock owned by the United [33] States and with its affairs managed by federal government officials selected by the United States as owner of such stock; that said corporation was so organized on October 17, 1933, pursuant to Executive Order of the President of the United States, No. 6340, dated October 16, 1933; that its organization was ratified and its life as a governmental instrumentality and agency was extended to April 1, 1937, by Section 7 of the Act of January 31, 1935 (Public No. 1, 74th Congress); that by Section 2 of the Act of January 26, 1937 (Public No. 2, 75th Congress) its life as a governmental instrumentality and agency was again extended to June 30, 1939, or such earlier date as may be determined by the President; that the original capital of said corporation was \$3,000,000. and the funds therefor were made available by Executive Order of the President of the United States, No. 6340, dated October 16, 1933, out of the appropriation of \$3,300,000,000. authorized by Section 220 of the National Industrial Recovery Act, \$100,000,000. of which the President was authorized to allocate for expenditures in carrying out, among others, the purposes of the Agricultural Adjustment Act, and said appropriation

was carried in the Fourth Deficiency Act from the fiscal year 1933; that its said capital was increased by \$97,000,000. pursuant to the Act of Congress of April 10, 1936 (Public No. 489, 74th Congress) which authorized and directed the stockholders of the corporation to increase the authorized capital of said corporation by \$97,000,000. and directed the Reconstruction Finance Corporation to acquire that amount of non-assessable capital stock of said corporation; that by Act of Congress approved March 8, 1938 (Public No. 442, 75th Congress) provision was made that as of the 31st day of March in each year and as soon as possible thereafter, beginning with March 31, 1938, an appraisal of all the [34] assets and liabilities of said Commodity Credit Corporation for the purpose of determining the net worth of said Commodity Credit Corporation shall be made by the Secretary of the Treasury, and the value of the assets shall, insofar as possible, be determined on the basis of market prices at the time of appraisal and a report of any such appraisal shall be submitted to the President as soon as possible after it has been made, and in the event any such appraisal shall establish that the net worth of said Commodity Credit Corporation is less than \$100,000,000, the Secretary of the Treasury, on behalf of the United States, shall restore the amount of such capital impairment by a contribution to said Commodity Credit Corporation in the amount of such impairment, and to enable the Secretary of

the Treasury to make such payment to said Commodity Credit Corporation, there is authorized to be appropriated annually, commencing with the fiscal year 1938, out of any money in the Treasury not otherwise appropriated, an amount equal to any capital impairment found to exist by virtue of any such appraisal, and in the event that any such appraisal shall establish that the net worth of said Commodity Credit Corporation is in excess of \$100,000,000. such excess shall, as soon as practicable after such appraisal, be deposited in the treasury of said Commodity Credit Corporation and shall be credited to miscellaneous receipts, and the Secretary of the Treasury is directed, as soon as practicable, to use any amount so deposited to retire an equivalent amount of the public debt, which amount shall be in addition to any other amount required to be used for such purpose, and the Secretary of Agriculture, the Governor of the Farm Credit Administration, and the Reconstruction Finance Corporation are authorized and directed to transfer to the United States all right, title and interest in and to the capital stock of said Commodity Credit Corporation which each of them then *hold*, [35] and all rights of the United States arising out of the ownership of such capital stock shall be exercised by the President, or by such officer, officers, agency or agencies as he shall designate, and in such manner as he shall prescribe, and with the approval of the Secretary of the Treasury, said Commodity Credit

Corporation is authorized to issue and have outstanding at any one time, bonds, notes, debentures, and other similar obligations in an aggregate amount not exceeding \$500,000,000., and such obligations shall be in such forms and denominations, shall have such maturities, shall bear such rate of interest, shall be subject to such terms and conditions, and shall be in such manner and sold at such prices as may be prescribed by said Commodity Credit Corporation, with the approval of the Secretary of the Treasury, and such obligations shall be fully and unconditionally guaranteed both as to principal and interest by the United States, and such guarantees shall be expressed on the face thereof, and such obligations shall be lawful investments and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof, and in the event that said Commodity Credit Corporation shall be unable to pay upon demand, when due, the principal of, or interest on, such obligations, the Secretary of the Treasury shall pay to the holder the amount thereof so authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, and thereupon to the extent of the amount so paid the Secretary of the Treasury shall succeed to **all rights of the holders** of such obligations of said Commodity Credit Corporation so issued, and for such purpose the Secre-

tary of the Treasury is authorized to use as a public-debt transaction the proceeds from the sale of any [36] securities thereafter issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of said Commodity Credit Corporation's obligations thereunder, and the Secretary of the Treasury may at any time sell any of the obligations of said Commodity Credit Corporation so acquired by him, and all redemptions, purchases and sales by the Secretary of the Treasury of the obligations of said Commodity Credit Corporation shall be treated as public-debt transactions of the United States, and no such obligations shall be issued in excess of the assets of said Commodity Credit Corporation, including the assets to be obtained from the proceeds of such obligations, but a failure to comply with such provision shall not invalidate the obligations or the guaranty of the same, and the Commodity Credit Corporation shall have power to purchase such obligations in the open market at any time and at any price, and bonds, notes, debentures and other similar obligations so issued for said Commodity Credit Corporation shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal and local taxation (except surtaxes, estate, inheritance and gift taxes); that the

President of the United States by Executive Order No. 7848, dated March 22, 1938, acting by virtue of and pursuant to the authority vested in him by the Act of Congress of February 24, 1938 (Public No. 432, 75th Congress) and said Act of Congress of March 8, 1938 (Public No. 442, 75th Congress) duly designated the Secretary of the Treasury on behalf of the United States to receive from the Reconstruction Finance Corporation all of said capital stock as the Reconstruction Finance Corporation may hold pursuant to any provision of law referred to in subsection (b) of Section I of said Act of February 24, 1938, [37] and to receive from the Secretary of Agriculture and the Governor of the Farm Credit Administration such stock of said Commodity Credit Corporation as they held on March 22, 1938, and the Secretary of the Treasury was thereby authorized and directed to exercise on behalf of the United States any and all rights accruing to the holder of such stock; that thereafter, pursuant to said Executive Order No. 7848 and said Acts of Congress therein referred to, all of the capital stock of said Commodity Credit Corporation was so transferred to the Secretary of the Treasury, and since that time all of said stock has been, and the same now is, so held by the Secretary of the Treasury.

II.

That included in the purposes for which said Commodity Credit Corporation was so organized

and exists is the lending upon commodities produced in the United States, agricultural and otherwise, so as to enable producers thereof to finance the carrying and orderly marketing of such commodities, to assist in the orderly marketing of such commodities for domestic consumption and for export, to assist in the regulation of interstate and foreign commerce in such commodities to the extent necessary to provide an orderly, adequate, and balanced flow of such commodities in interstate and foreign commerce through storage of reserve supplies, to assist farmers in obtaining, insofar as practicable, parity prices for such commodities and parity of income, to assist consumers in obtaining an adequate and steady supply of such commodities at fair prices, and to assist in the conservation of national resources and in the preservation, maintenance and rebuilding of farm and ranch resources in the national public interest; that under its charter and by-laws said corporation is and was at all times herein mentioned authorized and empowered to deal in such commodities, agricultural and otherwise, as may from time to time [38] be designated by the President of the United States; that the President of the United States has designated cotton as such commodity.

III.

That pursuant to its public purposes and governmental functions and powers and authority so

vested in it, and as the means for carrying out such purposes and functions, said Commodity Credit Corporation heretofore has advanced large sums of money to producers of cotton, secured by cotton deposited in various warehouses and by warehouse receipts covering such cotton which have been delivered to and are held by said corporation; that under the loan agreements pursuant to which said money was so advanced said cotton is pledged to said corporation as security for said advances and for all fees, costs and expenses incident to insuring, carrying, handling and marketing said collateral, including reasonable attorney fees, and said corporation has possession and the right to possession of said cotton, and in the event of sales of said cotton by said corporation because of non-payment of said advances when due, or because of the happenings of any other contingencies giving said corporation the right to sell said cotton, the respective borrowers who have complied with the terms of said loan agreement have no personal liability for any deficiencies resulting from said sales, the liability of said respective borrowers in such event being limited to said collateral so pledged.

IV.

That prior to 12 o'clock meridian Monday, of March 7, 1938, said Commodity Credit Corporation had in its possession, through the negotiation to it of warehouse receipts, and on deposit in a certain

warehouse belonging to Valley Compress Company, at Pinedale, Fresno County, California, a large quantity of cotton [39] on which said Commodity Credit Corporation had so advanced large sums of money to the producers thereof, and of which it had such possession and right to possession, and in and to which it held such rights, liens and interests, and certain of said cotton has continuously since said date remained on deposit in said warehouse and in such possession of said Commodity Credit Corporation, and it has continued to hold and *how* holds said warehouse receipts and said rights, liens and interests, and said cotton now is so deposited in said warehouse and is in the possession of said Commodity Credit Corporation by virtue of said warehouse receipts. That on the 7th day of March, 1938, 12 o'clock meridian, and between such time and the 21st day of June, 1938, and after such June 21, 1938, the Commodity Credit Corporation received and had in its possession, through the negotiation to it of warehouse receipts, and on deposit in said warehouse a large quantity of cotton on which said Commodity Credit Corporation had, at such times, advanced large sums of money to the producers thereof and on which it held warehouse receipts and of which it had such possession and right of possession and in and to which it held such rights, liens and interests, and certain of said cotton has continuously since said times remained on deposit in said warehouse and in such posses-

sion of said Commodity Credit Corporation, and it has continued to hold and now holds said warehouse receipts and said rights, liens and interests, and said cotton is now so deposited in said warehouse and is in possession of said Commodity Credit Corporation by virtue of said warehouse receipts.

V.

That on said 7th day of March, 1938, and continuously thereafter, defendant G. P. Cummings was, and he now is, County Assessor of the County of Fresno, State of California, and at all [40] times herein mentioned defendant County of Fresno was, and it now is, a political subdivision of the State of California; that defendant G. P. Cummings, as said Assessor, purporting to act under and pursuant to the statutes of the State of California, has, from time to time between March 7, 1938, and June 21, 1938, levied assessments upon all of the cotton that was so deposited in said warehouse belonging to said Valley Compress Company, including all of said cotton then so deposited by said Commodity Credit Corporation and covered by said warehouse receipts so held by said Commodity Credit Corporation; that said cotton was so assessed at the full assessable value thereof without any deductions or allowances whatsoever being made by reason of the rights, liens and interests of said Commodity Credit Corporation therein, and without any consideration whatsoever being given to said rights,

liens and interests; that on the 21st day of June, 1938, said defendant, as said Assessor, purporting to act under and pursuant to the statutes of the State of California, seized and gave notice that he had on that day seized possession of 20,990 bales of cotton in said warehouse of said Valley Compress Company and that he would sell the same, or so much thereof as may be necessary, to satisfy the taxes so levied and assessed against said 20,990 bales of cotton, together with the cost of seizure and other costs, at public auction, on Wednesday, June 29, 1938, at the hour of 10 o'clock a. m., of said day at the warehouse of said Valley Compress Company at Pinedale, Fresno County, California; that said 20,990 bales of cotton which said Assessor claims to have so assessed and seized and which is so noticed for sale, includes the cotton referred to and described in paragraph IV hereof; and that in the case of cotton on which the Commodity Credit Corporation had made such advances to producers between the 7th day of March, 1938, and the 21st day of June, 1938, the ad- [41] vances were in some instances made before the levy of assessment and in some instances after such levy of assessment. That on said 7th day of March, 1938, and at all times thereafter, the market value of said cotton, so included in said 20,990 bales and on which said Commodity Credit Corporation made said advances, was, and the same now is, substantially equal to or less than the amounts so advanced thereon, and at

all of said times the interest of the Commodity Credit Corporation in and to said cotton was and now is public property of the United States so held by said Commodity Credit Corporation as said instrumentality and agency of the United States; that said rights, liens and interests of plaintiff in and to said property are exempt from taxation by the State of California, and by every political subdivision thereof, under the Constitution and laws of the United States, and also under section I of Article XIII of the Constitution of the State of California, and also under section 3607 of the Political Code of the State of California.

VI.

That notwithstanding the premises defendant G. P. Cummings threatens to offer said 20,990 bales of cotton for sale as in said notice specified, entirely irrespective of said rights, liens and interests of plaintiff herein and without in any way reserving or protecting said rights, liens or interests, and will then and there sell said cotton to any bidder whose bid shall be at least equal to the purported tax assessed thereon, together with costs of seizure and sale, unless some better bid is obtained therefor, entirely irrespective of the fact that the value of said cotton is far in excess of such bid and entirely irrespective of the fact that said purchaser may be without financial responsibility to respond for the damages and loss that will result to plaintiff by

reason of said sale, and defendant G. P. [42] Cummings threatens to and will thereupon undertake to convey said cotton to said purchaser and to vest title thereto in said purchaser, and threatens to and will thereupon take possession of said cotton so seized and sold and deliver the same to said purchaser, and said purchaser will undertake to dispose of and sell and deliver said cotton to others; that under the laws of the State of California under and pursuant to which said sale has been noticed and will be held, the owners of said property are given and accorded no rights of redemption whatsoever; that as a result of the aforesaid facts and circumstances plaintiff will be deprived of its possession and of its lien and its rights and remedies to realize, recover and collect its advances secured by said cotton will be lost or impaired.

VII.

That defendant G. P. Cummings is a resident and citizen of the County of Fresno, State of California, and of the Southern District of California, Central Division, and the said County of Fresno is situated within the Southern District of California, Central Division thereof.

VIII.

That this suit arises under the Constitution and laws of the United States and involves rights, privileges and immunities owned and claimed by the

plaintiff under the Constitution and laws of the United States and denied and disputed by the defendants.

IX.

That the matter in controversy herein, exclusive of interest and costs, amounts to more than \$3,000, and in that regard plaintiff alleges that the amount of said tax and the value of the said property and the value of the interest of the plaintiff therein each exceeds the sum of \$3,000. [43]

X.

That this suit is brought under and pursuant to the Federal Declaratory Judgment Act (Judicial Code, section 274d, 28 U.S.C.A., section 400); that an actual controversy exists between plaintiff and defendants herein in that plaintiff contends that it has acquired rights, interests and liens in and to the cotton on which it has made advances and has acquired and holds warehouse receipts as aforesaid, and that said rights, interests and liens so acquired and held by plaintiff constitute property that is exempt from taxation by the State of California and all political subdivisions of said state, and that no valid or legal assessment can be made of said cotton, and no valid or legal actions or proceedings can be had or taken respecting the seizure and sale thereof for non-payment of taxes, unless said assessments and said actions and proceedings are expressly made subject to all said rights, interests

and liens of plaintiff in and to said cotton, and unless any tax sales of said cotton are by express terms made subject to all said rights, interest and liens of plaintiff; on the other hand, defendants contend that said cotton is subject to assessment and taxation by the State of California and its political subdivisions, and is subject to seizure and sale in the event of non-payment of taxes, without said assessments, seizures or sales being made subject to said rights, interests and liens of plaintiff.

Wherefore, plaintiff prays:

1. That this Court adjudge, decree and declare the legal rights of the parties hereto, respecting the assessment of taxes by defendants on the cotton on which plaintiff has made advances and holds warehouse receipts as aforesaid, and respect- [44] ing the seizure and sale of said cotton in the event of the nonpayment of such taxes, and that this Court adjudge and decree that all such assessments, seizures and sales are illegal and void unless the same are expressly made subject to the rights, interests and liens of plaintiff in and to said cotton.

2. That plaintiff have such other and further relief as may seem meet and just.

JOHN D. GOODLOE,

REGINALD S. LAUGHLIN,

Attorneys for Plaintiff. [45]

State of California,
City and County of San Francisco—ss.

Reginald S. Laughlin, being first duly sworn,
deposes and says:

I am one of the attorneys for plaintiff in this action; that I have read the foregoing Complaint, and know the contents thereof, and the same is true of my own knowledge, except as to matters stated therein on information and belief, and as to those matters I believe it to be true; that the reason why this verification is not made by an officer of plaintiff corporation is that none of its officers are now within the State of California where I reside.

REGINALD S. LAUGHLIN.

Subscribed and sworn to before me this 24th day of October, 1938.

[Seal] LULU P. LOVELAND,
Notary Public in and for the City and County of
San Francisco, State of California.

Received a copy of the foregoing this 25th day of Oct., 1938.

DAN F. CONWAY,
W. C. TUPPER,

Attorneys for defendant.

[Endorsed]: Filed Oct. 25, 1938, at min. past
..... o'clockm. R. S. Zimmerman, Clerk. By Francis
E. Cross, Deputy. [46]

[Title of District Court and Cause.]

MOTION TO DISMISS AMENDED BILL
OF COMPLAINT.

Come now the defendants above named and file herein a motion to dismiss the amended bill of complaint in the above entitled matter upon the following grounds, to-wit: [47]

I.

That said amended bill of complaint does not state facts sufficient to constitute a cause of action against these defendants.

DAN F. CONWAY,

District Attorney, County of
Fresno.

W. C. TUPPER,

Assistant District Attorney,
County of Fresno.

Attorneys for Defendants.

Received a copy of the foregoing this 25th day of Oct., 1938.

JOHN D. GOODLOE,

REGINALD S. LAUGHLIN,

Attorneys for Plaintiff.

[Endorsed]: Filed Oct. 25, 1938, at min. past
..... o'clockm. R. S. Zimmerman, Clerk. By Francis
E. Cross, Deputy. [48]

[Title of District Court and Cause.]

MEMORANDUM OF ORDER.

The defendants' motion to dismiss plaintiff's amended complaint is denied on the authority of *City of New Brunswick vs. United States*, 276 U.S. 547, and *Webster vs. Board of Regents*, 163 Cal. 705, for the reason that the lien interest of the Commodity Credit Corporation, an agency wholly owned by the United States, may not be burdened through taxation by the state or its subdivisions.

Such being the view of the Court, plaintiff is entitled to judgment for declaratory relief, petitioned for in its amended complaint, and it will propose a decree accordingly.

January 11, 1939.

[Endorsed]: Filed Jan. 12, 1939. R. S. Zimmerman, Clerk. By Francis E. Cross, Deputy Clerk.

[50]

In the District Court of the United States, Southern District of California, Northern Division.

Equity No. E-26.

COMMODITY CREDIT CORPORATION,
Plaintiff,

vs.

COUNTY OF FRESNO and G. P. CUMMINGS,
Assessor of the County of Fresno, State of
California,

Defendants.

JUDGMENT

On the 25th day of October, 1938, plaintiff, by its attorneys, John D. Goodloe, Esq., and Reginald S. Laughlin, Esq., with leave of defendants and this court, duly filed its amended bill of complaint herein, and thereafter on said day defendants, by their attorneys, Dan F. Conway, Esq., District Attorney, County of Fresno, and W. C. Tupper, Esq., Assistant District Attorney, County of Fresno, duly filed a motion to dismiss said amended bill of complaint, and thereafter on said day said motion to dismiss said amended bill of complaint came on regulary for hearing before the above entitled court, Honorable George Cosgrave, District Judge, presiding, Edward F. Treadwell, Esq., and Hans A. Klagsbrunn, Esq., appearing for plaintiff, and said W. C. Tupper, Esq., and James J. Arditto,

Esq., Deputy Attorney General, appearing for defendants, and said motion having been orally argued and thereafter written memoranda of points and authorities having been filed herein by the respective parties, and said motion having been duly submitted to the court, and the court being fully advised in the premises and having denied said motion to dismiss said amended bill of complaint, and the defendants not desiring to further answer or plead, It Hereby Is Adjudged and Decreed: [51]

1. That plaintiff is an arm and instrumentality of the United States, wholly owned by the United States and engaged exclusively in exercising governmental functions of the United States.

2. That plaintiff, as such arm and instrumentality and in the exercise of such functions, has acquired and holds rights, liens and interests in and to the cotton referred to in the complaint herein on which plaintiff has made advances and obtained and holds warehouse receipts as set forth in said complaint, and said rights, liens and interests are immune from taxation by the State and all political subdivisions thereof.

3. That said rights of plaintiff in and to said cotton include the right to the possession thereof.

4. That defendants can make no valid or legal assessments against plaintiff's rights, liens and interests in and to said cotton, and can make no valid or legal seizures or sales of said cotton in the event of the non-payment of any taxes assessed or

levied against said cotton or any interest therein, unless all said rights, liens and interests of plaintiff in and to said cotton are expressly excluded therefrom, and unless such seizures and sales are made, by express terms, subject to such rights, liens and interests including the right of possession thereto.

5. That plaintiff is entitled to recover its costs of suit from defendants, taxed at the sum of \$38.30.

Done in open court this 3d day of March, 1939.

GEO. COSGRAVE,

District Judge.

Judgment entered March 4, 1939. Docketed March 4, 1939—"C". Book CO 1, Page 25.

R. S. ZIMMERMAN,

Clerk.

By FRANCIS E. CROSS,

Deputy.

[Endorsed]: Filed Mar. 4, 1939. R. S. Zimmerman, Clerk, by Francis E. Cross, Deputy Clerk. [52]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE UNITED STATES CIRCUIT COURT OF APPEAL IN AND FOR THE NINTH CIRCUIT.

Notice Is Hereby Given that the County of Fresno, and G. P. Cummings, Assessor of the County of Fresno, State of [53] California, defendants above named, hereby appeal to the Circuit

Court of Appeals for the Ninth Circuit, from the final judgment entered in this action on March 4, 1939.

Dated: May 4th, 1939.

DAN F. CONWAY,

District Attorney, County of
Fresno.

W. C. TUPPER,

Assistant District Attorney,
County of Fresno.

Attorneys for Appellant.

Address: Court House,
Fresno, California.

EARL WARREN,

Attorney General, State of
California.

JAMES J. ARDITTO,

Deputy Attorney General,
As of Counsel.

[Endorsed]: Filed May 5, 1939. Copies mailed to Attorneys for Plf. 5/5/39. R. S. Zimmerman, Clerk, by Edmund L. Smith, Deputy Clerk. [54]

[Title of District Court and Cause.]

COST BOND

Know All Men by These Presents:

That we, County of Fresno, California, and G. P. Cummings, County Assessor of Fresno County, California, as Principals, and Hartford Accident

& Indemnity Company, a body corporate, duly incorporated under the laws of the State of Connecticut, and authorized to act as Surety under the Act of Congress, Approved August 13, 1894, as amended by the Act of Congress Approved March 23, 1910, whose principal office is located in the City of Hartford, As Surety, are held and firmly bound unto the above named Plaintiff in the sum of Two Hundred Fifty and 00/100 (\$250.00) Dollars: to which payment well and truly to be made we bind ourselves, jointly and severally, our heirs, administrators, executors, successors and assigns, firmly by these presents. Sealed with our seals and dated this 2nd day of June, 1939.

Whereas, the Defendants, County of Fresno and G. P. Cummings, County Assessor of Fresno County, have prosecuted their appeal to The United States Circuit Court of Appeals For The Ninth Circuit to reverse the decree entered in said cause, by the United States District Court For The Southern District of California, Northern [57] Division, on the 4th day of March, 1939, against said Defendants.

Now, Therefore, the condition of the above obligation is such that if the named Defendants shall prosecute their appeal to effect and answer all costs, not to exceed the sum of Two Hundred Fifty and 00/100 (\$250.00) Dollars, if they fail to make good their plea, or the appeal is dismissed or the decree affirmed or such costs as the Appellate Court may award if the judgment is modified, then this obliga-

tion is to be null and void, otherwise to remain in full force and effect.

COUNTY OF FRESNO,

CALIFORNIA,

By W. A. COLLINS,

Chairman of Board of Supervisors.

G. P. CUMMINGS,

HARTFORD ACCIDENT &

INDEMNITY CO.,

By B. F. GATES,

Attorney-in-Fact.

DAN F. CONWAY,

District Attorney, County of
Fresno.

W. C. TUPPER,

Assistant District Attorney,
County of Fresno.

Attorneys for Appellants.

State of California,

County of Fresno—ss.

On this 2nd day of June in the year one thousand nine hundred and 39 before me, Barbara Warren, a Notary Public in and for said County of Fresno, residing therein, duly commissioned and sworn, personally appeared B. F. Gates known to me to be the Attorney In Fact of the Hartford Accident and Indemnity Company, the Corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the Corporation therein named, and he

acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, at my office, in the said County of Fresno the day and year in this certificate first above written.

[Seal] BARBARA WARREN,
Notary Public in and for the County of Fresno,
State of California. My Commission will expire
Feb. 6, 1941.

[Endorsed]: Filed Jun. 3, 1939. R. S. Zimmerman,
Clerk, by Edmund L. Smith, Deputy Clerk.
[58]

[Title of District Court and Cause.]

CLERK'S CERTIFICATE

I, R. S. Zimmerman, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing 58 pages, numbered from 1 to 58, inclusive, contain full, true and correct copy of the Complaint; Temporary Restraining Order and Notice of Hearing of Application for Temporary Injunction; Motion to Dismiss Complaint; Minute Order of July 18, 1938; Stipulation and Order continuing Restraining Order in effect; Stipulation and Order continuing Restraining Order in effect; Stipulation and Order for filing Amended Complaint; Amended Bill of Complaint; Motion to Dismiss Amended Bill of

Complaint; Minute Order of October 25, 1938; Memorandum of Order for Judgment; Judgment; Notice of Appeal; Cost Bond on Appeal, and Designation of Record on Appeal which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I Do Further Certify that the fees of the Clerk for comparing, correcting and certifying the foregoing record amount to \$10.05, and that said amount has been paid me by the Appellants herein.

Witness my hand and the Seal of the District Court of the United States for the Southern District of California, this 10th day of June, A. D. 1939.

[Seal]

R. S. ZIMMERMAN,

Clerk.

By EDMUND L. SMITH,

Deputy Clerk. [59]

[Endorsed]: No. 9204. United States Circuit Court of Appeals for the Ninth Circuit. County of Fresno, and G. P. Cummings, Assessor of the County of Fresno, State of California, Appellants, vs. Commodity Credit Corporation, Appellee. Transcript of Record Upon Appeal from the District Court of the United States for the Southern District of California, Northern Division.

Filed June 12, 1939.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals in
and for the Ninth Circuit.

No. 9204

COUNTY OF FRESNO, et al.,

Appellants,

vs.

COMMODITY CREDIT CORPORATION,

Appellee.

DESIGNATION OF PARTS OF THE RECORD
FOR CONSIDERATION OF APPELLANTS'
POINTS TO BE RELIED UPON ON
APPEAL.

Come now the appellants above named and hereby designate for consideration of their points to be relied upon on appeal the same parts of the record as designated for printing.

Dated: June 19th, 1939.

DAN F. CONWAY,

District Attorney, County of
Fresno.

W. C. TUPPER,

Assistant District Attorney,
County of Fresno.

Attorneys for Appellants.

EARL WARREN,

Attorney General of the
State of California.

JAMES J. ARDITTO,

Deputy Attorney General.

Of Counsel.

Receipt of a copy of the within is admitted this 20th day of June, 1939.

By REGINALD S. LAUGHLIN,
Attorney for Appellee.

[Endorsed]: Filed Jun. 20, 1939.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS TO BE RELIED
UPON ON APPEAL

Come now the appellants above named and hereby designate the following points upon which they will rely on the appeal herein:

I.

None of the cotton, pledged to the Commodity Credit Corporation, and taxed by the appellants herein, 'belongs to' the Commodity Credit Corporation;

II.

None of the cotton, pledged to the Commodity Credit Corporation, and taxed by the appellants herein, 'belong to' the United States;

III.

A county of the State of California may:

(a) Legally levy a tax upon cotton located within its boundaries and owned by a taxable person at twelve o'clock M. on the first Monday in March, although that cotton has been pledged

to the Commodity Credit Corporation as security for a loan;

(b) Legally effect collection of a tax levied upon that cotton under the circumstances referred to in subdivision (a), *supra*;

IV.

Congress did not, within the purview of the Constitution of the United States, have the power to create the Commodity Credit Corporation, in that:

(a) The grant by Congress to the President of the United States of the right to create such agencies as the Commodity Credit Corporation constituted an unlawful delegation of power.

(b) The purposes for which the Commodity Credit Corporation was created are not within the enumerated powers granted to Congress by the Constitution of the United States.

Dated: June 19th, 1939.

DAN F. CONWAY,

District Attorney, County of
Fresno.

W. C. TUPPER,

Assistant District Attorney,
County of Fresno.

Attorneys for Appellants.

EARL WARREN,

Attorney General of the
State of California.

JAMES J. ARDITTO,

Deputy Attorney General.
Of Counsel.

Receipt of a copy of the within is admitted this
20th day of June, 1939.

By REGINALD S. LAUGHLIN,
Attorney for Appellee.

[Endorsed]: Filed Jun. 20, 1939.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PARTS OF RECORD TO
BE PRINTED OR OMITTED

To the Clerk of the United States Circuit Court of
Appeals in and for the Ninth Circuit:

The appellants above named hereby designate
for the printed record the following parts of the
certified transcript of record on appeal in the above-
entitled matter, to-wit:

Document	Commencing page of certified transcript of record
Attorneys, Names and Address of.....	1
Bond, For Costs on Appeal.....	57
Amended Bill of Complaint	33
Judgment	51
Memorandum of Order for Judgment.....	50
Motion to Dismiss Amended Bill of Com- plaint	47
Notice of Appeal	53

Appellants hereby designate that the following parts of the certified transcript of record on appeal be omitted from the printed record, to-wit:

Document	Commencing page of certified transcript of record
Bill of Complaint.....	2
Designation of Contents of Record on Appeal	55
Motion to Dismiss Complaint.....	22
Order, Temporary Restraining.....	17
Order, Minute, of July 18, 1938, submit- ting and continuing restraining order in effect	24
Order, Minute, of October 25, 1938, submit- ting cause	49
Stipulation and Order continuing restrain- ing order in effect.....	25
Stipulation and Order continuing restrain- ing order in effect.....	28
Stipulation and Order for filing Amended Complaint	30

In addition to the documents which we have heretofore designated for the printed record, you are hereby requested to include in the printed record the following documents, to-wit:

1. Designation of Parts of Record to be Printed or Omitted.
2. Statement of Points to be Relied upon on Appeal.

3. Designation of Parts of the Record for Consideration of Appellants' Points to be Relied Upon on Appeal.

Dated: June 19th, 1939.

DAN F. CONWAY,

District Attorney, County of
Fresno.

W. C. TUPPER,

Assistant District Attorney,
County of Fresno.

Attorneys for Appellants.

EARL WARREN,

Attorney General of the
State of California.

JAMES J. ARDITTO,

Deputy Attorney General.

Of Counsel.

Receipt of a copy of the within is admitted this
20th day of June, 1939.

By REGINALD S. LAUGHLIN,

Attorney for Appellees.

[Endorsed]: Filed Jun. 20, 1939.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION BY APPELLEE OF ADDITIONAL PARTS OF RECORD TO BE PRINTED.

To the Clerk of the United States Circuit Court of Appeals in and for the Ninth Circuit:

Appellee above named hereby designates for the printed record the following additional part of the certified transcript of record on appeal in the above entitled matter:

	Commencing page of certified transcript
Document	of record
Stipulation and Order for Filing Amended Complaint	30

Dated: June 22nd, 1939.

JOHN D. GOODLOE,
REGINALD S. LAUGHLIN,
Attorneys for Appellee.

[Endorsed]: Filed June 23, 1939.

